



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 12, 1996

Ms. Sally Henly  
Division Chief, General Counsel  
City of Austin  
Department of Law  
P.O. Box 1088  
Austin, Texas 78767-1088

OR96-0032

Dear Ms. Henly:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 36556.

The City of Austin (the "city") received an open records request for information about whether six named police officers "were ever disciplined, suspended from duty, placed on probation, in any way reprimanded, demoted or had any other action taken against them while in the employ of the Austin Police Department," and "a copy of all complaints filed against any of" the six named officers. Section 143.089(a)(2) of the Local Government Code mandates that documents relating to any misconduct by a police officer must be placed in the officer's civil service file "if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter." Information in a police officer's civil service personnel file can be withheld from disclosure only if it falls within a specific exception in the act. See Open Records Decision No. 562 (1990).

You contend the city may withhold the requested information from the public pursuant to section 552.103(a) of the Government Code. You also assert that the officers' social security numbers are excepted from disclosure based on sections 552.101 and that the officers' home addresses and telephone numbers are excepted from disclosure based on section 552.117 of the Government Code.

You submitted as a representative sample of the requested information, the civil service personnel file of one of the named officers. We note that the file contains information that is excepted from disclosure based on section 552.101 because it is private information. *See* Open Records Decision No. 600 (1992). However, we do not believe the requestor seeks the entire file of each officer or the information protected under section 552.101. Consequently, as we do not believe the requestor seeks any information that would be excepted from disclosure under section 552.101, we need not rule on this exception.

Section 552.103(a) applies to information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. *Open Records Decision No. 588 (1991)*. By excepting information from disclosure when access to such material is more appropriately sought through discovery, section 552.103 protects the discovery process and avoids interference in matters properly resolved in court. *See id.* at 4.

You inform us that five of the named officers participated in the arrest of Robert Joseph Ahr on September 18, 1994. You say that as a result of that arrest, three criminal cases, Cause Nos. 0423565, 0423566, and 0423567, are currently pending in Travis County Court. You explain that the sixth named officer arrested Anastassio Rigopoulos on September 17, 1995. You enclosed a copy of the Austin Police Department incident report for that arrest, the affidavit filing criminal charges against Mr. Rigopoulos, and the Austin Municipal Court case jacket related to the Rigopoulos charge, which indicates a court appearance.

You assert that the requested information "relates to the personal and work history of the officers who are the primary state's witnesses against the [defendants] in the pending litigation and who most likely will testify against them." You go on to say that "[t]he records are relevant to issues which may be litigated and are records the requestor should obtain through discovery, if at all."

We conclude you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a). Consequently, the city may withhold the requested records from required public disclosure pursuant to section 552.103 of the Government Code. We remind you that the applicability of section 552.103(a) ends once the litigation is concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We also note that when the litigation is concluded, the city must continue to withhold from disclosure the officers' home addresses. Gov't Code § 552.117.<sup>1</sup> Furthermore, in reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay H. Guajardo  
Assistant Attorney General  
Open Records Division

KHG/rho

Ref.: ID# 36556

Enclosures: Submitted documents

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<sup>1</sup>The reprimand in the file you submitted contained only the officer's home address and not his home telephone number.

cc: Mr. Robert P. (Chip) Waldron  
Attorney at Law  
1604 Nueces Street  
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(w/o enclosures)